



# House of Representatives

General Assembly

**File No. 270**

February Session, 2010

Substitute House Bill No. 5209

*House of Representatives, April 1, 2010*

The Committee on Commerce reported through REP. BERGER of the 73rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING SMALL BUSINESS TAX CREDITS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1      Section 1. (NEW) (*Effective from passage and applicable to income or*  
2      *taxable years, as appropriate, commencing on or after January 1, 2010*) (a) As  
3      used in this section:

4      (1) "Commissioner" means the Commissioner of Economic and  
5      Community Development;

6      (2) "Income year" means the income year or taxable year, as  
7      determined under chapter 207, 208 or 229 of the general statutes, as the  
8      case may be;

9      (3) "Qualified small business" means an employer, subject to tax  
10     under chapter 207, 208 or 229 of the general statutes, who employs  
11     fewer than twenty-five employees in Connecticut on the date of its  
12     application under subsection (c) of this section;

13       (4) "New employee" means a person hired after the effective date of  
14 this act, by the qualified small business during its income years  
15 commencing on or after January 1, 2010, and prior to January 1, 2013,  
16 to fill a new full-time job in this state. A new employee does not  
17 include a person who was employed in Connecticut by a related  
18 person with respect to the qualified small business during the twelve  
19 months prior to such hiring, or any person who was employed by the  
20 qualified small business in any position on the effective date of this  
21 section;

22       (5) "Full-time job" means a job in which an employee is required to  
23 work at least thirty-five or more hours per week. A full-time job does  
24 not include a temporary or seasonal job;

25       (6) "Related person" means (A) a corporation, limited liability  
26 company, partnership, association or trust controlled by the qualified  
27 small business, (B) an individual, corporation, limited liability  
28 company, partnership, association or trust that is in control of the  
29 qualified small business, (C) a corporation, limited liability company,  
30 partnership, association or trust controlled by an individual,  
31 corporation, limited liability company, partnership, association or trust  
32 that is in control of the qualified small business, or (D) a member of the  
33 same controlled group as the qualified small business; and

34       (7) "Control", with respect to a corporation, means ownership,  
35 directly or indirectly, of stock possessing fifty per cent or more of the  
36 total combined voting power of all classes of the stock of such  
37 corporation entitled to vote. "Control", with respect to a trust, means  
38 ownership, directly or indirectly, of fifty per cent or more of the  
39 beneficial interest in the principal or income of such trust. The  
40 ownership of stock in a corporation, of a capital or profits interest in a  
41 partnership, limited liability company or association, or of a beneficial  
42 interest in a trust shall be determined in accordance with the rules for  
43 constructive ownership of stock provided in Section 267(c) of the  
44 Internal Revenue Code of 1986, or any subsequent corresponding  
45 internal revenue code of the United States, as amended from time to

46 time, other than Paragraph (3) of said Section 267(c).

47 (b) (1) There is established a qualified small business job creation tax  
48 credit program for qualified small businesses, whereby a qualified  
49 small business that employs a new employee in a new full-time job  
50 may be allowed a tax credit against the tax imposed under chapter 207,  
51 208 or 229 of the general statutes, other than the liability imposed by  
52 section 12-707 of the general statutes.

53 (2) The tax credit shall be in an amount equal to two hundred eight  
54 dollars per month for each new employee hired.

55 (3) For each of the two successive income years after the new  
56 employee is hired, the tax credit shall be in an amount equal to two  
57 hundred eight dollars per month for such new employee, provided  
58 such new employee is employed for a full income year.

59 (4) No tax credit shall be allowed for any new employee hired by a  
60 qualified small business in any income year commencing on or after  
61 January 1, 2014.

62 (5) The total amount of the tax credit shall be claimed for the income  
63 year in which the qualified small business hires a new employee and, if  
64 eligible, the two immediately succeeding income years. Any tax credit  
65 not used in an income year shall expire.

66 (c) To be eligible to claim the tax credit, a qualified small business  
67 shall apply to the commissioner in accordance with the provisions of  
68 this subsection before hiring each new employee. The application shall  
69 be on a form provided by the commissioner and shall contain  
70 sufficient information as required by the commissioner, including the  
71 activities that the qualified small business primarily engages in, the  
72 North American Industrial Classification System code of the qualified  
73 small business, the number of full-time employees employed by the  
74 qualified small business as of the application date, and position or job  
75 title of the new employee to be hired.

76 (d) (1) Upon receipt of an application, the commissioner shall render

77 a decision on the application, in writing, not later than thirty days after  
78 the date of its receipt by the commissioner. If the commissioner  
79 approves the application of the qualified small business, the  
80 commissioner shall issue a certification letter indicating that the tax  
81 credit shall be available to be claimed by the qualified small business if  
82 the qualified small business otherwise meets the requirements of this  
83 section.

84 (2) The total amount of tax credits granted under this section and  
85 under section 12-217ii of the general statutes, as amended by this act,  
86 shall not exceed ten million dollars in any one fiscal year.

87 (3) No qualified small business claiming the tax credit under this  
88 section, with respect to a new employee, may claim any other credit  
89 against any tax under any other provision of the general statutes, with  
90 respect to the same new employee.

91 (e) If the qualified small business is an S corporation or an entity  
92 treated as a partnership for federal income tax purposes, the tax credit  
93 may be claimed on a pro rata basis by the shareholders or partners of  
94 the qualified small business based on percentage of ownership. If the  
95 qualified small business is a single member limited liability company  
96 that is disregarded as an entity separate from its owner, the tax credit  
97 may be claimed by the limited liability company's owner. No credit  
98 allowed under this section shall exceed the amount of tax imposed by  
99 chapter 229 of the general statutes.

100 (f) The commissioner shall monthly provide to the Commissioner of  
101 Revenue Services a list detailing all tax credits that have been  
102 approved and all qualified small businesses that have been issued a  
103 certification letter under subsection (d) of this section.

104 Sec. 2. Subdivision (2) of subsection (e) of section 12-217ii of the  
105 general statutes is repealed and the following is substituted in lieu  
106 thereof (*Effective from passage and applicable to income years commencing*  
107 *on or after January 1, 2010*):

108 (2) The total amount of credits granted to all taxpayers under this  
109 section and section 1 of this act shall not exceed ten million dollars in  
110 any one fiscal year.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage and applicable to income or taxable years, as appropriate, commencing on or after January 1, 2010</i>	New section
Sec. 2	<i>from passage and applicable to income years commencing on or after January 1, 2010</i>	12-217ii(e)(2)

**Statement of Legislative Commissioners:**

In section 1(b)(1), "the tax" was changed to "the liability" for accuracy; in section 1(d)(3), "other" was added after "claim any" for accuracy; and section 1(e) and (f) were combined and (g) was relettered accordingly for clarity and accuracy.

**CE**        *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 11 \$</b>	<b>FY 12 \$</b>
Department of Revenue Services	GF - Revenue Loss	3.5 million	7.0 million
Department of Economic & Community Development	GF - Cost	246,392	253,783
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Cost	65,688	168,791

Note: GF=General Fund

**Municipal Impact:** None

#### **Explanation**

The bill will result in a revenue loss to the General Fund of approximately \$3.5 million in FY 11 and \$7.0 million per year beginning in FY 12. The revenue loss will be from the personal income tax, the corporation business tax, and the insurance premiums tax. The revenue loss is a result of the creation of a small business job creation tax credit equal to \$208 per job per month the new hire fills the job for a period of up to 3 years.

The credit is subject to the same \$10 million limit as the already existing job creation tax credit (CGS 12-217ii). The revenue loss indicated above assumes the current job creation credit accounts for \$3 million of the \$10 million cap in FY 12. The fiscal impact of the bill may be more or less depending on the use of the existing tax credit but the total impact of the two credits is estimated to reach the \$10 million per

<sup>1</sup> The estimated non-pension fringe benefit rate as a percentage of payroll is 26.66% which includes health insurance, social security, Medicare, life insurance, and unemployment compensation. Fringe benefit costs for new positions do not include pension costs as new positions will not impact the state's pension contribution until FY 12 after the next scheduled actuarial valuation.

year cap beginning in FY 12.

It is anticipated the number of applicants seeking a tax credit administered by the Department of Economic and Community Development (DECD) will be significant. Assuming there are 100 applicants, DECD will require two economic and community development agents (AR-25) with a salary of \$64,511 each; and two accounts examiners (AR-23) with a salary of \$58,685, to review employer information and applications and perform on-site audits.

### ***The Out Years***

The annualized ongoing revenue loss identified above would continue into the future subject to inflation, increased job creation activity, and the use of the existing job creation credit. The last year the credit can be claimed is FY 17.

The positions provided are temporary in nature and costs will continue, subject to inflation until FY 13.

*Sources: Department of Economic and Community Development  
Department of Revenue Services*

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**OLR Bill Analysis****sHB 5209*****AN ACT CONCERNING SMALL BUSINESS TAX CREDITS.*****SUMMARY:**

This bill authorizes insurance premium, corporation business, and personal income tax credits for small businesses (fewer than 25 Connecticut-based employees) creating new full-time jobs. It limits the total value of all credits to \$10 million per year by placing them under the same annual cap for the existing job creation incentive program. The credit equals \$208 per job for each month the new employee fills the job. Businesses qualify for the credits only for jobs they create between January 1, 2010 and December 31, 2013.

Businesses must apply for the credits to the Department of Economic and Community Development (DECD) commissioner before hiring new employees. A business may claim a credit for up to three years, depending on when it created the job and whether the new employee is still on the payroll for the entire second or third year after the year he or she was hired. The bill specifies how certain types of businesses may claim credits against the personal income tax.

**EFFECTIVE DATE:** Upon passage and applicable to income or taxable years beginning on or after January 1, 2010.

**CREDIT AMOUNT**

The bill authorizes credits for small businesses that create new jobs filled by new employees. The credit equals \$208 per month for each employee hired to fill a new, full-time job. The bill places the credits under the existing \$10 million cap for credits issued under the job creation incentive program (CGS § 12-217ii). Businesses may claim the bill's credits only for jobs they create between January 1, 2010 and



December 31, 2013. The bill allows no credits for jobs created on or after January 1, 2014.

Businesses can apply the credits against the insurance premium, corporation business, and personal income taxes. Authorizing credits against the personal income tax distinguishes the bill's credits from those authorized under existing tax credit programs. Depending on how they are organized, some businesses do not pay business taxes, but their owners pay personal income taxes on the income they received from the business. Most existing tax credit programs do not allow these taxpayers to claim credits against the income tax. The bill does, but specifies that a credit cannot exceed the tax owed.

A business may claim the credit for up to three years after hiring a new employee to fill a new job. But, after the first year, the business may claim the credit in each of the subsequent two years only if the new employee is still on the payroll for the full year.

Businesses claiming the bill's credits for hiring new employees cannot count these employees toward other credits the law allows. These credits include those authorized under the job incentive and the enterprise zone (CGS § 12-217) programs.

#### **QUALIFYING FOR THE CREDIT**

The bill's credits are available to all businesses employing fewer than 25 employees in Connecticut and that are liable for insurance premium, corporation business, or personal income taxes. (Businesses that are not liable for these taxes cannot benefit from the credits by reassigning them to businesses that are subject to the taxes.)

These businesses qualify for a credit if they create a new job and hire a new employee to fill it. The employee cannot be someone who already works in Connecticut for a related business. The bill describes the conditions under which two or more businesses may be related. The new job must require the employee to work at least 35 hours per week on a regular, full-time basis. New temporary or seasonal jobs do not count toward the credit.

As noted above, a business qualifies for the credit only for jobs it created between January 1, 2010 and December 31, 2013. The business can claim the credit for each job it creates during this period for up to three years, depending on when it created the job and whether the same employee holds the job.

The business may claim the credit for the first income year in which it hired the new employee to fill the new job. The credit equals \$208 times the number of months the employee works for the business during that income year. The business may claim the credit in each of the next two income years if the employee held the job for the full income year. The credit equals \$2,496 per year (i.e., \$208 times 12).

## **ACCESSING THE CREDIT**

### ***Application to DECD***

To claim the credits, businesses must apply to the DECD commissioner for a certification letter before hiring new employees. In doing so, the business must use the commissioner's form and provide enough information for her to determine the business's eligibility. The information must describe the business' activities, indicate its North American Industrial Classification System code, state how many people it employs as of the application date, and list the position or job title of each new employee it plans to hire.

The commissioner must act on the application within 30 days after receiving it. She must issue the certification letter if she approves the application. In doing so, she must state that the business may claim the credit if it meets the bill's requirements.

The commissioner must monthly provide the revenue services commissioner a list of the businesses that she approved for credits and the credit amounts.

### ***Apportioning Credits against the Income Tax***

The bill extends its credits to people who own a business or shares in a business that is not liable for business taxes. These owners, shareholders, and partners pay income taxes on their share of the

income the business generates.

With respect to S corporations and partnerships, the bill requires the credit to be apportioned among the shareholders or partners on a pro rata basis. With respect to single member limited liability companies that are disregarded as entities separate from their owners, only the company's owner may claim the credit.

## **BACKGROUND**

### ***Related bill***

The bill places the credits it authorizes under the \$10 million per year cap for the existing job incentive tax credits. sSB 5357, which the Commerce Committee reported on March 18, increases the annual cap for these credits to \$25 million.

## **COMMITTEE ACTION**

Commerce Committee

Joint Favorable Substitute

Yea    20    Nay   0    (03/16/2010)